

**Amendment and Response**

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Serial No.: 10/758,626

Confirmation No.: 6109

Filed: January 15, 2004

For: RESEALABLE CONTAINERS HAVING INTERNAL ROLLER SURFACE

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**Remarks**

The Office Action of September 26, 2006 has been received and reviewed. With claims 1, 14, 30, and 35 having been amended, claims 8, 9, 11, 31, and 34 having been canceled, and claims 36-39 having been added, the pending claims are claims 1-7, 10, 12-30, 32, 33, and 35-39 (of which claims 17 and 23-25 are withdrawn from consideration). Reconsideration and withdrawal of the rejections are respectfully requested for at least the reasons set forth below.

**Claim Cancellations**

Please cancel claims 8, 9, 11, 31, and 34 without prejudice.

**Claim Amendments**

Claim 1 has been amended to incorporate other recitations, e.g., recitations originally found in dependent claims 8, 9, and 11. Support for this amendment may be found in the application as originally filed (*see, e.g.*, original claims 8, 9, and 11, and Figures 13, 17, and 18).

Claim 14 has been amended to be consistent with amended claim 1 and canceled claim 11.

Claim 30 has been amended to incorporate other recitations, e.g., recitations originally found in dependent claims 31 and 34. Support for this amendment may be found in the application as originally filed (*see, e.g.*, original claims 31 and 34, and Figures 13, 17, and 18).

Claim 35 has been amended to be consistent with amended claim 30 and canceled claim 34.

Entry and consideration of these amendments are respectfully requested.

**The 35 U.S.C. §102 Rejections**

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.

M.P.E.P. § 2131 (citation omitted).

Claims 1-5, 7, 13, 15, 16, 18, and 30-33 were rejected under 35 U.S.C. § 102(b) as being anticipated by Giarrante (U.S. Patent No. 5,893,489). Claims 1-4, 7-9, 11-16, 18, 30, and 32-35

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were rejected under 35 U.S.C. § 102(b) as being anticipated by Stern et al. (U.S. Patent No. 6,102,235). Applicants respectfully traverse these rejections and assert that Giarrante and Stern et al. both fail to teach each and every element of the claims as required for anticipation.

Claims 1-5, 7, 13, 15, 16, 18, and 30-33 (Giarrante)

Giarrante recites a cover 21 for a container. As shown in Figures 1 and 5, the cover 21 may include a base member 22 and a lid 23. A shelf 33 (on which a paint brush can be rested) and a spout 26 may also be provided. *See, e.g., Giarrante*, column 2, lines 48-67, column 3, lines 1-12.

Applicants submit that no teaching is identified within the disclosure of Giarrante of a container including each and every recitation of amended claims 1 and 30 as required for anticipation.

For example, independent claim 1 has been amended to incorporate the recitations of now-canceled claims 8, 9, and 11. Independent claim 30 has similarly been amended to incorporate the recitations of now-canceled claims 31 and 34. As none of dependent claims 8, 9, 11, and 34 is included in this rejection, amended claims 1 and 30 are submitted to be novel over Giarrante.

In addition, the rejected claims recite additional elements that may further support patentability. For example, claim 1 (as well as dependent claim 32) recites a container that includes a sloped floor. The Office Action indicates that Giarrante has a "floor sloped at an angle of 0 degrees." *Office Action*, Sept. 26, 2006, page 2. Applicants respectfully disagree with the assertion that the Giarrante floor is sloped. The word "sloped" may be generally defined as "to have an upward or downward inclination; take an oblique direction; incline; slant." WEBSTER'S NEW WORLD COLLEGE DICTIONARY 1263 (3d ed. 1996). As a result, it is unclear how a sloped floor could be interpreted to be "at an angle of 0 degrees" as asserted by the Office Action.

For at least the above reasons, Applicants respectfully submit that claims 1 and 30 are not anticipated by Giarrante. With respect to dependent claims 2-5, 7, 13, 15, 16, 18, 32, and 33, each of which depends from either independent claim 1 or 30, Applicants submit that such

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claims are also novel over Giarrante for the same reasons as presented above. Moreover, these claims each recite additional elements that further support patentability. For example, claims 13 and 14 recite that the container body includes stop members operable to support the first roller surface in first and second positions, respectively. Applicants submit that nothing is identified in Giarrante that teaches such stop members for the shelf 33, or that the shelf 33 is even movable.

Reconsideration and withdrawal of this rejection are requested.

Claims 1-4, 7-9, 11-16, 18, 30, and 32-35 (Stern et al.)

Stern et al. describes a lid including an integral paint roller tray. As shown in Figure 3, the lid 1 includes a first opening 15 formed in the lid surface 3. A cover 21 is provided for closing over the first opening 15, wherein the cover 21 has a planar first surface 29 and an opposite, textured second surface 31. *See, e.g., Stern et al.*, column 5, lines 25-53.

Applicants submit that no teaching is identified within the disclosure of Stern et al. that describes a container including each and every recitation of amended independent claims 1 and 30 as required for anticipation.

For example, with respect to claim 1, Stern et al. does not teach a container wherein the first roller surface is pivotaly coupled to one pair of opposing sidewalls, and further wherein, when the first roller surface is in a first position, a substantial portion of the first roller surface is located within the reservoir above the designated volume of liquid and substantially between the at least one pair of opposing sidewalls.

Rather, the textured surface 31 of Stern et al., which the Office Action indicates as equivalent to the claimed first roller surface, is part of a lid rather than a component that is coupled to opposing sidewalls of a container body as claimed. *Stern et al.*, Figure 3.

Moreover, it is submitted that nothing is identified within the disclosure of Stern et al. that teaches a container wherein a substantial portion of a first roller surface is located *within the reservoir* and *substantially between one pair of opposing sidewalls* when in a first position as recited in claim 1. Rather, the textured surface is, when in use, located clearly outside of the container (*see, e.g., Stern et al.*, Figure 1). In fact, it appears from the illustrations (*see, e.g., Stern et al.*, Figures 3 and 4) that the textured surface 31 of Stern et al., even when closed, would

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be above the reservoir (e.g., as the latter is defined by the floor and sidewalls of the container as recited in claim 1). Accordingly, even when closed, the Stern et al. surface 31 would not have a substantial portion located within the reservoir above the designated volume of liquid and substantially between the at least one pair of opposing sidewalls as recited in claim 1.

With respect to claim 30, the claim is amended herein to incorporate recitations of claims 31 and 34. As claim 31 was not included with this rejection, it is submitted that amended claim 30 is not anticipated by Stern et al.

For at least the above reasons, Applicants respectfully submit that claims 1 and 30 are not anticipated by Stern et al. Claims 2-4, 7, 12-16, 18, 32, 33, and 35, each of which depends from either independent claim 1 or 30, are also submitted to be novel over Stern et al. for the same reasons. In addition, such claims recite additional elements that may further support patentability. Reconsideration and withdrawal of this rejection are, therefore, requested.

**The 35 U.S.C. §103 Rejections**

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art references (or references when combined) must teach or suggest all the claim limitations. M.P.E.P. § 2143.

Claims 1-7, 10, 12, 13, 15, 16, 18-22, and 32 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Giarrante.

Claims 8, 9, 11, 14, 26-29, 34, and 35 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Giarrante in view of Stern et al.

Applicants respectfully traverse these rejections.

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*Claims 1-7, 10, 12, 13, 15, 16, 18-22, and 32 (Giarrante)*

Applicants submit that Giarrante does not teach, or even suggest, all the recitations of claims 1-7, 10, 12, 13, 15, 16, 18-22, and 32 required for obviousness.

For example, independent claim 1 has been amended to include recitations of dependent claims 8, 9, and 11, which are not included in this rejection. As a result, amended claim 1 is submitted to be allowable over Giarrante. Furthermore, because claims 2-7, 10, 12, 13, 15, 16, and 18-22 directly or ultimately depend from amended independent claim 1, these claims are also submitted to be allowable over Giarrante. Moreover, these dependent claims include additional recitations that may further support patentability.

With respect to dependent claim 32, independent claim 30 (of which claim 32 depends) has been amended to include recitations of dependent claim 31, which is not included in this rejection. As a result, claim 32 is submitted to be allowable over Giarrante. Moreover, claim 32 includes additional recitations that may further support patentability.

For at least the above reasons, Applicants respectfully submit that claims 1-7, 10, 12, 13, 15, 16, 18-22, and 32 are nonobvious over Giarrante. Reconsideration and withdrawal of this rejection are, therefore, requested.

Applicants note that the Examiner has taken official notice of several elements of the claims. For instance, The Office Action indicates that "[o]fficial notice is taken that . . . perforated roller surfaces and X-shaped support rib patterns are well known in the container art." *Office Action*, Sept. 26, 2006, page 3.

The M.P.E.P. makes clear it "would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known." M.P.E.P. § 2144.03(A) (citations omitted).

Applicants traverse official notice in these instances because the Examiner has not identified references that include, for example, perforated roller surfaces and X-shaped support rib patterns in the relevant container art, and furthermore, that such features are capable of instant and unquestionable demonstration as being well-known within the relevant container art. For instance, it is unclear why one would even combine an X-shaped support rib with the

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container of Giarrante. If these official notice rejections are maintained, Applicants respectfully request identification of references showing the particular features, e.g., perforated roller surfaces and X-shaped rib patterns, within the relevant container art.

Claims 8, 9, 11, 14, 26-29, 34, and 35 (Giarrante in view of Stern et al.)

Claims 8, 9, 11, and 34 have been canceled, rendering their respective rejections moot. Moreover, claim 14 depends from amended claim 1, while claim 35 depends from amended claim 30. Finally, claims 27-29 depend from independent claim 26, which recites an article including a designated volume of liquid and a container.

Applicants submit that Giarrante in view of Stern et al. does not teach, or even suggest, all the recitations of claims 14, 26-29, and 35 as required to establish *prima facie* obviousness. For example, with respect to dependent claim 14, independent claim 1 (of which claim 14 depends) now includes recitations of dependent claims 8, 9 and 11. Applicants submit that Giarrante fails to teach, or even suggest, all the elements of claim 1 (e.g., it fails to teach or suggest: a container body comprising a sloped floor; at least one pair of opposing sidewalls; a first roller surface pivotally coupled to the pair of opposing sidewalls; and a first position of the first roller surface wherein a substantial portion of the first roller surface is located within the reservoir above the designated volume of liquid and substantially between the at least one pair of opposing sidewalls). Nothing is identified within the disclosure of Stern et al. that remedies these deficiencies. For example, as discussed above, Stern et al. does not teach, or even suggest, a container wherein the first roller surface is pivotally coupled to one pair of opposing sidewalls, and further wherein, when the first roller surface is in a first position, a substantial portion of the first roller surface is located within the reservoir above the designated volume of liquid and substantially between the at least one pair of opposing sidewalls. In fact, the surface 31 of Stern et al. appears to be at all times beyond the sidewalls and outside of the reservoir as these terms are recited in claim 14.

Moreover, claim 14 recites that the container body includes a stop member operable to support the first roller surface in the second position. There is nothing identified within the

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disclosures of Giarrante and Stern et al. that equates to such a stop member. As a result, claim 14 is submitted to be allowable over Giarrante in view of Stern et al.

With respect to dependent claim 35, independent claim 30 (of which claim 35 depends) has been amended to include recitations of dependent claim 31, which is not included in this rejection. As a result, claim 35 is submitted to be allowable over Giarrante in view of Stern et al.

With respect to claim 26, it is submitted that Giarrante and Stern et al., either alone or in combination, fail to teach or suggest all the claim recitations. For example, the documents do not teach or suggest, *inter alia*, a container including a container body, a removable lid, and a first roller surface coupled to the container body. The shelf 33 of Giarrante, which the Office Action indicates as equivalent to the first roller surface, is fixedly attached to the removable base member 22 of the cover 21 and not to the container body itself. *Giarrante*, Figure 1. Similarly, the textured surface 31 of Stern et al., which the Office Action indicates as equivalent to the first roller surface, is part of the lid 1 of the container and not a separate component coupled to the container body itself. *Stern et al.*, Figure 3. Therefore, the combination of Giarrante and Stern et al. cannot be found to teach or suggest a container wherein the first roller surface is coupled to the container body as recited in claim 26.

Still further, with respect to claim 26, nothing is identified within Giarrante and Stern et al., either alone or in combination, that teaches or suggests a container wherein a first roller surface is positioned between two or more sidewalls, and wherein the first roller surface is, when in a first position, located above the designated volume of liquid and below an uppermost edge of the container body. Rather, it appears from the illustrations (*see, e.g.*, *Giarrante*, Figures 1 and 5, *Stern et al.*, Figures 3, 8, and 19) that the equivalent roller surfaces of Giarrante and Stern et al. are above the sidewalls and above the uppermost edge of the container. Therefore, Applicants submit that nothing is identified in Giarrante and/or Stern et al. that teaches or suggests the elements as recited in claim 26. Claims 27-29 are submitted to be patentable over Giarrante in view of Stern et al. not only in view of their dependence on claim 26, but also due to the additional subject matter recited therein.

Still further, Applicants submit that no motivation or suggestion to modify Giarrante in view of Stern et al. to meet the limitations of the rejected claims has been presented as required

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for *prima facie* obviousness. In fact, it is submitted that the two documents teach away from combination. For instance, Stern et al. indicates that one objective of its design is to provide a lid that "has a planar top surface allowing it to be stacked with other paint-filled containers without the possibility of damage to the lid." *Stern et al.*, column 2, lines 64-67. Giarrante, on the other hand, has a lid that would appear to generally interfere with such stacking. See *Giarrante*, Figure 1. For these and other reasons, it is unclear why one of skill in the art would be motivated to combine the teachings of these two documents.

Applicants respectfully submit that claims 14, 26-29, and 35 are nonobvious over *Giarrante* in view of *Stern et al.* for at least the reasons set forth above. Reconsideration and withdrawal of this rejection are, therefore, requested.

New Claims

New claims 36-39 are presented herein above. Support for these claims may be found in the application as originally filed (*see, e.g., Specification*, page 16, lines 6-8 and 12-27, and 28-29; page 17, lines 1-11; and Figures 13-15, 17, and 18). Entry and consideration of these new claims are respectfully requested.



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It is submitted that the pending claims are in condition for allowance and notification to that effect is respectfully requested. The Examiner is invited to contact Applicants' Representatives, at the below-listed telephone number, if it is believed that prosecution of this application may be assisted thereby.

Respectfully submitted

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**CERTIFICATE UNDER 37 CFR §1.8:**

The undersigned hereby certifies that this paper is being transmitted by facsimile in accordance with 37 CFR §1.6(d) to the Patent and Trademark Office, addressed to Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 26<sup>th</sup> day of January, 2007, at 10:45am (Central Time).

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